# TEXAS DEPARTMENT OF MOTOR VEHICLES

#### BOARD MEETING

10:05 a.m.
Thursday,
January 13, 2011

200 East Riverside
Building 150
Room 1.B1
Austin, Texas 78704

### BOARD MEMBERS:

Victor Vandergriff, Chair Cheryl E. Johnson, Vice Chair Cliff Butler Jim Campbell Ramsay Gillman Victor Rodriguez Marvin Rush Laura Ryan Johnny Walker

# STAFF MEMBERS:

Ed Serna, Executive Director Brett Bray, General Counsel

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1	PROCEEDINGS
2	MR. VANDERGRIFF: Good morning.
3	AUDIENCE: Good morning.
4	MR. VANDERGRIFF: The first order of business
5	is to call the roll. We do have two directors that I know
6	are absent, Directors Gillman and Ryan.
7	And otherwise, Director Walker?
8	MR. WALKER: Present.
9	MR. VANDERGRIFF: Director Butler?
10	MR. BUTLER: Present.
11	MR. VANDERGRIFF: Director Rodriguez?
12	MR. RODRIGUEZ: Present.
13	MR. VANDERGRIFF: Director Rush?
14	MR. RUSH: Present.
15	MR. VANDERGRIFF: Director Campbell?
16	MR. CAMPBELL: Present.
17	MR. WALKER: Vice Chair Johnson?
18	MS. JOHNSON: Present.
19	MR. VANDERGRIFF: And I, Victor Vandergriff, am
20	also here as well.
21	The next item of business I don't see that I
22	have any cards, just general public comment, not on a
23	specific issue. We certainly give you the opportunity to
24	do that when it comes up, but is there anybody out there
25	in the audience from the public that wishes to comment on

1	some matter before the Department of Motor Vehicles?
2	(No response.)
3	MR. VANDERGRIFF: Seeing none, Bill is getting
4	into position to discuss the consent agenda, and I'll
5	recognize Mr. Harbeson.
6	MR. HARBESON: Thank you, sir.
7	The consent agenda today consists of five sets
8	of cases, the first being the agreed orders between the
9	Enforcement Section and the respondents. We have one
10	notice of violation case which is also an agreement
11	between the parties to settle the case; there's
12	enforcement dismissal cases where staff is recommending
13	dismissal of the case; Lemon Law warranty dismissal cases
14	where the parties have reached agreement as to the
15	warranty issues and want the case dismissed; and finally,
16	a franchise dismissal case where the parties are agreeing
17	to the dismissal of the case.
18	There are 24 cases under the first category,
19	being agreed orders; one NOV or notice of violation agreed
20	order, three dismissals, seven warranty dismissal cases,
21	and one franchise dismissal order. The staff is
22	requesting and recommending that these cases be approved.
23	MR. WALKER: I so move that we accept the

MR. VANDERGRIFF: We have a motion from

consent agenda as it's presented.

24

- 1 Director Walker. Do I have a second?
- 2 MR. RUSH: Second.
- 3 MR. VANDERGRIFF: Second from Director Rush.
- 4 All those in favor please raise your right hand in
- 5 support.
- 6 (A show of hands.)
- 7 MR. VANDERGRIFF: The motion carries
- 8 unanimously of the members present, and again, we do have
- 9 two members absent today.
- 10 The next item of business is 3.A which is the
- 11 adoption of rules under Title 43, Texas Administrative
- 12 Code.
- MR. ELLISTON: Good morning, Mr. Chair and
- members of the board. For the record, my name is Randy
- 15 Elliston. I'm the director of the Vehicle Titles and
- 16 Registration Division for the Texas Department of Motor
- 17 Vehicles.
- Before you today is our request for approval
- 19 for final adoption of amendments to the Texas
- 20 Administrative Code, Title 43, Chapter 207, Section 207.3
- 21 concerning public access. These proposed amendments were
- 22 posted in the Texas Register in accordance with statute,
- and no comments were received from the public.
- These amendments concern public access to title
- and registration records that are protected under the

- 1 Federal Drivers Privacy Protection Act and the Texas Motor
- 2 Vehicle Records Disclosure Act. Both statutes restrict
- 3 release of personal information in our files to specific
- 4 lawful uses.
- 5 The purpose of the amendments is to establish a
- 6 form of identification required to be presented to the
- 7 county or the Texas DMV regional offices to receive
- 8 personal information contained in our records so that we
- 9 have a consistent information or document that's required
- 10 to get this information. This amendment would require a
- 11 person to present an identification document with a
- 12 current photo ID and also a unique identification number.
- Documents acceptable to the department, as
- 14 posted in the original amendments, are a United States or
- 15 Territory of United States driver's license or state
- 16 identification certificate. Also was required a United
- 17 States passport or a foreign passport. After reviewing
- 18 the proposed rule, the agency has determined that two
- 19 additional forms of acceptable ID should also be added to
- 20 this list, and we'd ask you to also consider adding an
- 21 unexpired United States Military ID card and also a U.S.
- 22 Department of Homeland Security and U.S. Citizenship and
- 23 Immigration Services document, both of these which would
- 24 be required to have a photo ID and a unique identification
- 25 number.

- 1 And I believe you've been presented with the
- 2 additional language to add this to the amendment. We've
- 3 added this after the expansion of what's allowable, and we
- 4 would ask that you approve this rule amendment for final
- 5 adoption with those two additions.
- 6 MR. VANDERGRIFF: Vice Chair Johnson.
- 7 MS. JOHNSON: Mr. Chairman, I move to adopt
- 8 rule 207.3 with changes by adding unexpired Department of
- 9 Homeland Security or U.S. Citizenship and Immigration
- 10 Service identification and unexpired United States
- 11 Military identification as acceptable identification
- documents in Subsections (3) and (4).
- MR. RUSH: Second.
- MR. VANDERGRIFF: We have a motion and we have
- 15 a second by Director Rush. Any discussion?
- 16 (No response.)
- MR. VANDERGRIFF: Please raise your right hand
- in support of the motion.
- 19 (A show of hands.)
- 20 MR. VANDERGRIFF: Seeing none opposed, the
- 21 motion carries unanimously of the members present. Thank
- 22 you very much.
- The next item is 3.A.2 regarding a replacement
- 24 dealerships with motor vehicle distribution. Ms. Cost,
- 25 good morning.

1	MS. COST: Good morning. For the record, my
2	name is Molly Cost and I'm the director of the Motor
3	Vehicle Division.
4	I'm here today requesting that the board
5	consider the final adoption of amendments to Board Rule
6	215.109, known as the Replacement Dealership rule. This
7	rule allows a manufacturer or distributor to replace a
8	closed dealership with a new dealership of the same line
9	make without the new dealership being subject to protest
10	by surrounding like line dealers.
11	Basically this rule lets a manufacturer or
12	distributor put a placeholder in the market when a
13	dealership is terminated for cause or when a voluntary
14	termination occurs, allowing them to preserve the point
15	and facilitate reinstatement of sales and service for the
16	lines in question. In order to obtain this non-
17	protestable condition, certain criteria must be present,
18	and today's amendment will expand one of those criteria
19	and clarify another.
20	If adopted, this rule will reconcile the rule
21	with an amendment to Chapter 2301 of the Occupations Code
22	that was approved during the last legislative session.
23	House Bill 2640 increased the distance a franchised
24	dealership may relocate without being subject to protest
25	from surrounding like line dealers from one mile to two

- 1 miles. Currently the rule at issue allows a replacement
- dealership to be located up to one mile away from the
- 3 closed dealership and the proposed amendment would expand
- 4 that distance to two miles.
- 5 Staff believes that harmonizing the exemption
- from protest provision of the statute with the exemption
- 7 from protest provision portion of this rule will provide
- 8 consistency and be easier to implement for staff and
- 9 affected licensees.
- The other proposed amendment to this rule is to
- 11 clarify that the dealers that must be notified by the
- 12 manufacturer or distributor of the intention to replace a
- 13 closed dealership are the dealers within the same county
- of a 15-mile radius of the closed dealership, the same
- 15 dealers who would be eligible to protest if this was a new
- 16 dealership. This has always been the practice of the
- 17 agency with regard to this rule and the language will
- 18 specifically spell out for the manufacturers and
- distributors what their obligations are under this
- 20 provision.
- 21 This rule proposal was published in the Texas
- 22 Register in accordance with state law for public comment,
- and no comments were received. Therefore, we ask you to
- 24 adopt the proposed amendments to Rule 215.109 as
- published. And I'm available for any questions.

- 1 MR. CAMPBELL: I make a motion to approve.
- MS. JOHNSON: Second.
- 3 MR. VANDERGRIFF: We have a motion for approval
- 4 from Director Campbell, a second from Vice Chair Johnson.
- 5 Any discussion?
- 6 (No response.)
- 7 MR. VANDERGRIFF: Seeing none, please raise
- 8 your right hand in support.
- 9 (A show of hands.)
- 10 MR. VANDERGRIFF: The motion carries
- unanimously of the members present. Thank you very much.
- The next item is 3.B, and I'm going to
- 13 recognize our executive director, Mr. Serna.
- MR. SERNA: Mr. Chairman, board members, good
- 15 morning. For the record, my name is Ed Serna. I'm the
- 16 executive director of the Texas Department of Motor
- 17 Vehicles.
- 18 Staff would like to recommend that the board
- 19 not consider this rule at this time. This was for initial
- 20 posting. What we'd like to do is go back and put together
- 21 a cross-functional work group made up of staff members
- from Enforcement, Motor Carrier, and the General Counsel's
- Office, as well as representatives from TMTA to look at
- 24 all of our Motor Carrier rules and make sure that there
- aren't any inconsistencies.

- 1 What we found as we were preparing this draft
- 2 rule is that there are some other inconsistencies in the
- 3 rule that need to be cleaned up and addressed, and they're
- 4 primarily housekeeping, but we'd like to take this
- 5 opportunity to do that versus do it piecemeal.
- 6 MR. RODRIGUEZ: Do we need a motion to pass or
- 7 table?
- 8 MR. VANDERGRIFF: I was about to ask that
- 9 question. Do we need to continue it to the next meeting?
- 10 MR. BRAY: It's the Chair's discretion to
- 11 withdraw something from the agenda.
- 12 MR. VANDERGRIFF: Then I will just withdraw it.
- MR. SERNA: Thank you.
- MR. VANDERGRIFF: The next item is 3.C which is
- 15 consideration of a franchise proposal for decision.
- 16 MR. RODRIGUEZ: Mr. Chairman, on this matter is
- Molly going to brief first? Is that what you're going to
- 18 do?
- MS. COST: That was my plan, yes.
- MR. VANDERGRIFF: Please.
- MS. COST: For the record again, my name is
- 22 Molly Cost. I'm the director of the Motor Vehicle
- 23 Division.
- 24 In this matter Houston Mack filed an
- application to add the UD line of medium trucks

- 1 manufactured by UD Trucks of North America. Hayes, the
- 2 Protestant in this matter, is currently licensed to sell
- 3 and service UD medium trucks and is located in the same
- 4 county as Houston Mack. Because of this, Hayes is
- 5 eligible to protest Houston Mack's application and by
- 6 letter dated June 21, 2010 the Motor Vehicle Division
- 7 notified Hayes of the application, its right to protest
- 8 and the July 6, 2010 deadline to file a protest to the
- 9 application.
- 10 Hayes through its dealer principal, Cynthia
- 11 Hayes, filed a protest on July 1, 2010. On August 20,
- 12 2010, after the division had referred the matter to the
- 13 State Office of Administrative Hearings, Hayes' counsel
- filed an amended notice including the grounds for Hayes's
- protest to Houston Mack's application.
- 16 There are two board rules that govern the
- 17 notification of a right to protest an application that is
- sent by the division and the protest can then be filed by
- 19 the eligible dealer. Board Rule 215.105 states that a
- 20 notice of protest in opposition to an application shall be
- 21 in writing and signed by an authorized official, state the
- 22 basis upon which the protest is made and the reasons or
- 23 grounds for the protest, and that the protest is not made
- for purposes of delay or for any other purpose except for
- justifiable cause under Occupations Code, Section

- 1 2301.652(a).
- The second rule, Board Rule 215.106, states
- 3 that a notice of protest must be received in the
- 4 division's offices not later than 5:00 p.m. 15 days after
- 5 the date of mailing of the division's notice, along with
- 6 the accompanying filing fee. 215.106 goes on to state
- 7 that any notice of protest received after this date shall
- 8 be deemed not timely filed and shall not be considered by
- 9 the board.
- The issue in this case is whether or not proper
- 11 notice was received, and the SOAH proposal for decision
- 12 before you today recommends that Hayes's protest be
- disallowed because their July 1 notice was deficient
- 14 because it failed to state required elements, their August
- 15 20 notice was procedurally defective because it was not
- 16 filed timely, and that Board Rules 215.105 and 215.106 are
- 17 designed to be read together and making both mandatory
- 18 requirements.
- 19 In this case staff is concerned that the ALJ's
- 20 recommendation is a misapplication of board rules, a
- 21 misinterpretation of applicable case law, and a departure
- 22 from prior division practice. Rule 215.106 includes a
- 23 deadline for filing a protest and provides the consequence
- for failing to meet the deadline, namely disallowance of
- 25 the protest. However, Rule 215.105 does not provide an

- express consequence for failing to provide the required 1 2 substantive elements of the notice provision. believes that this distinction is intentional and that 3 4 reading the rules together to apply the consequence of 5 failure to timely file a protest to the failure to 6 properly include all words is a misapplication of the 7 rules. 8 In addition, there have been many court cases that have found that while strict compliance is required 9 for notice deadlines, substantial compliance is adequate 10 11 for other notice provisions. 12 Lastly, the division has long interpreted these rules in this manner requiring strict compliance only with 13 14 the filing deadline and payment of the filing fee and not 15 in the contents of the protest itself. 16 Thus, the issue presented for the board's consideration today is whether a protest notice should be 17 18 deemed defective and a protest disallowed when the notice is filed and the protest fee paid timely but het notice 19 fails to include word for word all substantive elements. 20 Please be reminded that under state law the 21
- 22 board may only change findings and conclusions for one of 23 three reasons: misapplication or misinterpretation of 24 applicable law, agency rules or prior agency decisions; 25 reliance on a prior agency decision that is incorrect or

- 1 should be changed; or a technical error. Staff believes
- 2 that the first provision, the
- 3 misapplication/misinterpretation of law, is in play here.
- A proposed order finding that the notice was
- 5 proper and remanding the case back to SOAH for a hearing
- on the merits is within your notebook under Tab 3.C.
- 7 I'm available for any questions.
- 8 MR. RODRIGUEZ: Mr. Chairman, may I ask a
- 9 couple of questions?
- 10 MR. VANDERGRIFF: Sure, please.
- MR. RODRIGUEZ: Molly, your analysis and the
- 12 recommendation that we reverse the ALJ's decision, vacate
- the order and remand the case back to the SOAH hearing
- 14 examiner. Right?
- MS. COST: Yes, sir.
- 16 MR. RODRIGUEZ: I agree with you, based on my
- 17 reading of all the material that was submitted to us. I
- 18 think this is a clear and easy decision. So my second
- 19 question is do we actually have to have this hearing
- today, or can we just move to agree with your finding and
- 21 recommendation and proceed with that?
- 22 MS. COST: Obviously, allowing the parties to
- present oral argument is at the board's discretion.
- Obviously, the proceeding has to occur in order for the
- 25 board to enter the order, but the parties' oral argument

- 1 is a privilege, not a right.
- MR. WALKER: Are both parties represented here
- 3 today?
- 4 MS. COST: Yes, they are. Both the Applicant
- 5 and the Protestant, and the Intervener, the manufacturer,
- 6 are here.
- 7 MR. RODRIGUEZ: Chairman, I move that we
- 8 reverse the ALJ's decision and vacate the order and remand
- 9 the case back to SOAH.
- 10 MR. VANDERGRIFF: We have a motion on the
- 11 floor. Do we have a second for that motion?
- MR. WALKER: I'll second the motion.
- MR. VANDERGRIFF: We have a motion and a
- second. Do we have any discussion?
- 15 MR. CAMPBELL: Mr. Chairman, would this be the
- 16 appropriate time? When they're making decisions the law
- 17 says we've got to do it one way but in the past they're
- 18 saying that we've done it in a different way. Should we
- 19 take that up as an action item to say from here forward
- we're going to operate by the law and not violate the
- 21 rules of the law?
- 22 MR. VANDERGRIFF: Well, I think that certainly
- this board, we have a rule that if we want to strengthen
- 24 the interpretation of it that's at our discretion, I think
- 25 we'd ask the staff to come back with some language that

- 1 might enforce that.
- 2 MR. CAMPBELL: I think the challenge with this
- 3 is it becomes subjective and I think it needs to be where
- 4 it's not subjective. It's the rule and that's what you
- 5 operate under. Right now I don't think we have any choice
- 6 but to refer it back.
- 7 MR. WALKER: We have Supreme Court rulings on
- 8 this that have said that adheres to the law is basically
- 9 strict adherence is to the time limit but that it's more
- 10 broadly interpreted as to interpretation of the filing of
- 11 the protest. In other words, we've all been sued,
- 12 probably, in this room numerous times.
- 13 (General laughter.)
- MR. WALKER: When you answer a lawsuit, there's
- 15 not specific words to answer a lawsuit. The more common
- 16 answer would be I hereby deny any and all allegations as
- 17 contended in the lawsuit. So it's not that I have to
- specifically say that I hereby deny or dispute all
- 19 allegations that Houston Mack made, it's that I dispute
- 20 all of the allegations.
- 21 And the other thing you have to look at is that
- 22 the State of Texas accepted a \$200 check within the time
- period and you have to pay the \$200 in order to protest,
- so why would you send in \$200 if it wasn't the intent to
- 25 protest the application?

- 1 MR. CAMPBELL: I agree with that, but I guess
- 2 if you're going to say that the rule is this, then you
- 3 should operate under the rule or you should change the
- 4 rule. So if you're saying just a common response, I want
- 5 to protest, is enough, then the rule should be that.
- 6 MR. RODRIGUEZ: I was just going to suggest,
- 7 Mr. Chairman, if we want to review the rules, I guess we
- 8 could.
- 9 MR. VANDERGRIFF: That would be a separate
- 10 discussion, that comes up as a separate item. We still
- 11 have the motion, and Director Campbell asked those
- 12 questions with respect to this particular case.
- MR. RODRIGUEZ: I don't disagree with you. I'm
- just saying if we're going to deal with the rules, we need
- 15 to do that another time.
- 16 MR. VANDERGRIFF: Absolutely true.
- MS. JOHNSON: My question with regard to this
- 18 motion, if we're going to proceed to vote, then we are not
- 19 going to hear from the parties? Is that the pleasure of
- 20 the board? Is that what I'm hearing by virtue of the fact
- 21 that we move forward with this motion?
- 22 MR. RODRIGUEZ: That's the motion.
- 23 MR. WALKER: That's the motion that's on the
- 24 table right now.
- MR. VANDERGRIFF: If you voted for the motion,

- 1 yes, then you wouldn't hear oral arguments.
- 2 Do we have any further discussion or questions?
- 3 (No response.)
- 4 MR. VANDERGRIFF: Okay. I will call for your
- 5 vote. Raising your right hand is in support of the motion
- 6 which would be to reverse and remand back.
- 7 (A show of hands.)
- 8 MR. VANDERGRIFF: The motion carries
- 9 unanimously of the seven present. Again, we had two
- 10 absent.
- I want to apologize to the parties in terms of
- 12 having you come here to have this done so quickly like
- 13 that. We obviously do not vote our consents or do
- anything prior to these meetings. I think normally the
- 15 case would be that we would have oral argument, but in
- 16 this case the facts seem pretty clear to the board. So
- 17 thank you.
- 18 The next item up is 3.D which is the
- 19 consideration of warranty performance proposals, 3.D.1,
- 20 actually.
- MR. HARBESON: May I proceed, sir? My name is
- 22 Bill Harbeson with the Enforcement Division of the Texas
- 23 Department of Motor Vehicles.
- 24 Today's case is a warranty repair case. The
- 25 Complainant, Mr. Luna, several years ago bought a dump

- 1 truck and subsequent to his purchase was having problems
- with the vehicle stalling out when going uphill.
- 3 The hearing was held and it was determined
- 4 after the hearing, and the recommendation of the hearing
- 5 officer was that this vehicle did not have a defect, that
- 6 the stalling was caused by other factors, that being not
- 7 having enough gasoline in the tank so that when the
- 8 vehicle did go on an incline the gas line did not have
- 9 enough gas for the vehicle to continue to run and it would
- 10 stall out.
- 11 So the hearing officer's finding and
- 12 recommendation was that there was not a defect and because
- 13 there was not a defect there could not be an order for
- repairs to be made, and the recommendation before you
- today from the administrative law judge is that the case
- 16 be dismissed.
- 17 With us today is Mr. Luna and also Mr. Collins.
- 18 Mr. Luna is the Complainant and the purchaser of the
- 19 truck and the owner of the truck; Mr. Collins is
- 20 representing PACCAR, the manufacturer of the truck.
- 21 MR. VANDERGRIFF: Do we have any questions of
- 22 Mr. Harbeson from the board?
- MR. HARBESON: I should have said this, but
- 24 it's the staff recommendation, after reading the record
- and the findings of fact and conclusions of law, that the

- 1 recommended disposition of the case by SOAH is correct,
- 2 and because there is not a defect, there is not repairs
- 3 that can be ordered, the case should be, therefore,
- 4 dismissed. And an order to that effect has been given to
- 5 you should you decide to agree with me.
- 6 MR. VANDERGRIFF: The parties are prepared to
- 7 present discussion on this. Given the last case, does the
- 8 board wish to have those oral arguments heard here? I see
- 9 no objection, I will allow them to proceed.
- 10 Mr. Luna.
- 11 MR. BUTLER: I would suggest a time limit.
- 12 MR. VANDERGRIFF: We do have a time limit and
- 13 the time limit -- the parties, I believe, have been
- 14 notified of that -- is ten minutes per side.
- 15 MR. WALKER: Can I ask a question before we go?
- MR. VANDERGRIFF: Sure.
- 17 MR. WALKER: Bill, is this not a Lemon Law
- 18 case?
- 19 MR. HARBESON: It is a warranty performance
- 20 case. It was initially brought as a repurchase case. It
- 21 was determined that because of the age and the time of the
- 22 complaint, it did not qualify as a repurchase, so we're
- 23 talking about a warranty performance case.
- MR. WALKER: Mr. Luna is the original purchaser
- of the vehicle?

- 1 MR. HARBESON: Yes, sir.
- 2 MR. VANDERGRIFF: Go ahead, Mr. Luna.
- 3 MR. LUNA: I wanted to object because I began
- 4 having problems with my truck over two years ago and I
- 5 noticed that the problem with that truck is it will
- 6 overheat, it will shut down, but every time it shuts down,
- 7 I wait and it will turn back on. I've had it towed about
- 8 three times and I've had it stall before and I wait like
- 9 an hour for it to cool down and turn back on, it will run.
- 10 And a diesel truck, if it ever runs out of diesel, to get
- 11 it back going, you've got to plunge it. It's not as easy
- as just turning it on. You've got to take the diesel
- filter off, fill it back up and you've got to plunge it so
- 14 it will start back up.
- 15 It's a big 18-wheeler dump truck. I've had it
- 16 towed about three times. I bought the truck here at
- 17 Performance Truck Center here in Austin, and the director
- 18 of sales, his name is Austin Pell, he drove one time with
- 19 me and the truck stalled on him, and it wasn't because of
- 20 the diesel because we turned it back on and we drove to
- 21 the shop.
- I know that the truck has a problem and it's
- 23 not the diesel. I have five other trucks and I've never
- 24 had any problems with my trucks except for that one. And
- 25 the problem is that it overheats and it will stall out.

- 1 MR. VANDERGRIFF: Excuse me. Mr. Luna, are you
- 2 through at this point in time?
- 3 MR. LUNA: Yes, I am done.
- 4 MR. VANDERGRIFF: Okay. You will have a couple
- 5 of minutes after the party answers your questions, if you
- 6 have something to respond to.
- 7 MR. LUNA: Yes.
- 8 MR. COLLINS: May I proceed?
- 9 MR. VANDERGRIFF: Please.
- 10 MR. WALKER: Let me ask him a question real
- 11 quick.
- 12 MR. VANDERGRIFF: Are you addressing Mr. Luna?
- MR. WALKER: Mr. Luna.
- MR. VANDERGRIFF: Okay.
- MR. WALKER: Before we go further. Mr. Luna,
- what kind of engine is in the truck?
- MR. LUNA: The truck has a Cummins 330
- 18 horsepower. It's a PACCAR engine; PACCAR makes the engine
- 19 for Cummins.
- MR. WALKER: No. I own a trucking company, I
- 21 know a little bit about trucks here. Cummins makes
- 22 engines and sells them to PACCAR.
- MR. LUNA: Yes.
- MR. WALKER: It's a Cummins engine. Have you
- 25 contacted Cummins?

- 1 MR. COLLINS: I represent Cummins as well.
- 2 MR. VANDERGRIFF: Can you identify yourself for
- 3 the record?
- 4 MR. COLLINS: I'm sorry. William Collins,
- 5 attorney for PACCAR. We took over PACCAR's defense in
- 6 this case.
- 7 MR. WALKER: So you're representing PACCAR and
- 8 Cummins both here today?
- 9 MR. COLLINS: Cummins is actually not in the
- 10 case, but for all sensible purposes I represent Cummins in
- 11 their warranty cases and vehicle cases throughout the
- 12 State of Texas, and we took over the case and I worked
- 13 with folks from Cummins. And I'll let you finish your
- 14 question, but it is a Cummins engine.
- 15 MR. WALKER: Well, I've bought enough trucks to
- 16 know that generally you can buy different engines and
- 17 PACCAR really doesn't care, used to not, about what engine
- 18 you put in there. Today they've gotten pretty restrictive
- about what kind of engine you've got in a PACCAR product.
- 20 But did you ever contact Cummins about the
- 21 problem?
- 22 MR. LUNA: Yes, sir. That's what I did at the
- beginning, Cummins. But see, the engine is a PACCAR
- 24 Cummins. It's like PACCAR manufactures the same engines.
- MR. WALKER: No, PACCAR doesn't manufacture.

- 1 MR. COLLINS: It's a Cummins manufactured
- 2 engine.
- 3 MR. WALKER: Okay. Well, why don't you go
- 4 ahead.
- 5 MR. COLLINS: My name is William Collins. I
- 6 represent PACCAR in this case, but as I said, I've
- 7 represented Cummins before and continue to. We got
- 8 involved in the case at the request of PACCAR and worked
- 9 directly with Mr. Luna through some of the representatives
- 10 of Cummins and PACCAR.
- 11 Mr. Luna's complaints were initially that of
- 12 low power and stalling. PACCAR addressed the issue
- initially. They could not duplicate the problem. They
- 14 put data loggers on the engine. Everything seemed to work
- 15 fine. There was a test drive up a very steep incline, the
- 16 type of work he does, and it stalled. It was determined
- 17 at that time it's a very long fuel tank, that it was
- 18 probably low on fuel, and because of the grade of the hill
- 19 it was having this issue. I take that back. After that
- 20 they put the data loggers on there and test drove and
- 21 could not get any readings that would indicate a fault
- 22 code.
- We get involved, Cummins gets involved. We
- take the truck to Houston and we provide Mr. Luna with a
- 25 rental truck. Joe Boswell of Cummins, who is a field rep,

- 1 worked with Mr. Luna extensively. We did a dyno test.
- 2 The engine performed as it was supposed to perform. We
- 3 even changed out his injectors at that time to give him
- 4 the new breed of injectors so he would have less regens,
- 5 because as the injectors get old they blow black smoke,
- 6 and after the black smoke then you have to regen more. So
- 7 he got new injectors, all of this at no cost to him.
- 8 He takes his time getting the vehicle back, and
- 9 there is a dispute with the rental. Off the top of my
- 10 head, I think we paid for a week. And he was looking to
- 11 buy the rental vehicle; that fell through. I don't know
- what became of the dispute he had with the rental company.
- But in any event, Cummins/PACCAR, under policy, performed
- 14 these services.
- The next complaint comes in and he says he's
- 16 stalling out and it's overheating. Well, there's a hose
- 17 loose in the radiator. All of that has been fixed. It
- 18 had nothing to do with the power issue. It wasn't brought
- 19 before in the Lemon Law complaint. He has a new ECM, a
- 20 new harness. None of the problems could be identified.
- 21 And every time one thing was fixed, a new complaint was
- 22 raised of a different matter.
- And we've been through this drill with Mr. Luna
- 24 for a very long time, lots of money was spent, his vehicle
- 25 was tested out both by PACCAR and by Cummins. The

- documents were provided to the SOAH judge, we had a
- 2 hearing with witnesses, that's just about it. I urge the
- 3 board to accept the recommendation.
- 4 MR. WALKER: Well, you've changed a lot of
- 5 components on the truck, the engine, it sounds like, in
- 6 the truck.
- 7 MR. COLLINS: Actually, no.
- 8 MR. WALKER: The ECM you said?
- 9 MR. COLLINS: The ECM is the brains of the
- 10 truck.
- 11 MR. WALKER: You replaced it?
- MR. COLLINS: That was replaced.
- MR. WALKER: The harness?
- MR. COLLINS: The harness was replaced because
- 15 there was a solenoid wire issue.
- MR. WALKER: The injectors?
- 17 MR. COLLINS: The injectors were replaced, yes.
- 18 MR. WALKER: You've done a lot of work on the
- 19 truck.
- MR. COLLINS: Actually, that's not really a lot
- of work.
- MR. WALKER: That is a lot of work.
- MR. COLLINS: Well, I'll take issue. The
- 24 injectors were done as a precautionary measure for him to
- 25 give him new injectors. That had nothing to do with his

- 1 complaints.
- MR. WALKER: Well, Mr. Rush over here runs a
- 3 PACCAR dealership. I bet he'd tell you that's a lot of
- 4 work when you start replacing harnesses in trucks.
- 5 MR. COLLINS: But it's not extensive work.
- 6 MR. WALKER: Let me get to my question. My
- 7 question is if it's a fuel issue why are we replacing all
- 8 these other components on the truck to identify there's a
- 9 fuel issue?
- 10 MR. COLLINS: When you bring a vehicle in for
- 11 repair, you follow a repair tree. That's what people at
- 12 Performance do, that's what people at Cummins Southern
- 13 Plains do, that's what any mechanic company will do. They
- 14 follow a repair tree to document what the problem is. So
- when someone brings in a vehicle that says I'm having a
- 16 power issue, they follow a repair tree to see if there's
- an engine issue or an issue with a performance of power,
- and that's what they do.
- 19 So when you say a lot of repairs, there were a
- lot of diagnostics done, there were dynamometers done and
- 21 data loggers put on, but actual repairs, not really that
- 22 many. After the dynamometer was done, we elected to put
- 23 injectors on, new injectors, that didn't have to be put
- on, they had nothing to do with the problem, to give
- 25 him -- because he had said that he was regenerating more.

- 1 That's a whole different issue. Regeneration is because
- 2 we have emissions, as you would probably know, and black
- 3 smoke and you try to retard that smoke, so when it builds
- 4 up you have to clean it out which means you regen the
- 5 engine. So they put injectors on to give him new
- 6 injectors so the fuel rate is retarded.
- 7 It's not a fuel issue that's repairable, it's
- 8 the design of the truck, that's the way it is. It's an
- 9 application issue in some respects too.
- 10 MR. LUNA: All the problems that I've had, they
- all relate to the same power loss. He's saying there's a
- 12 bunch of different problems, but it's not, it all has to
- do with the same problem that I lose power or it will
- overheat and it will stall out on me. And I've had three
- 15 turbos changed on that truck, injectors, a lot of
- 16 different things, not just what he's talking about, more
- 17 things than that.
- 18 And I have five other trucks and when I ever
- 19 take it to a mechanic, they start out with the smaller
- 20 things. If it was just the fuel, then they would just
- 21 tell me no, it's just the fuel. But they looked at
- 22 different things and they always start with the bigger
- 23 things. If it was just the fuel, how come they didn't
- 24 tell me that at the very beginning of the whole problem?
- 25 And I have five other trucks, we put fuel in

- 1 the big tanks every few days, we have a fuel tank at our
- 2 yard, and we never have any problems with that, with the
- 3 fuel.
- 4 MR. VANDERGRIFF: Mr. Collins, I don't
- 5 necessarily want to go back and forth here with an
- 6 argument on the facts. You had a few more minutes of
- 7 time. Did you have anything further you wanted to say?
- 8 MR. COLLINS: The fuel issues were discussed
- 9 with Mr. Luna.
- 10 MR. VANDERGRIFF: I said I didn't want to go
- 11 necessarily back and forth.
- 12 MR. COLLINS: Well, I feel like I had to say
- that because there's no -- everything is transparent here,
- everything has been discussed with him, and I do take
- issue with that's there been a number of repairs to
- 16 address the problem.
- MR. VANDERGRIFF: Vice Chair Johnson, do you
- 18 have a question?
- MS. JOHNSON: I have two, and one I'd really
- 20 like to ask Mr. Walker or Mr. Rush. Is 500 miles on a
- vehicle of this type considered typically used? And
- 22 whoever can answer that question. Maybe the PACCAR
- gentleman, Mr. Collins can answer that question.
- But my other question for you, Mr. Collins, is
- does the owner's manual state that low fuel may cause

- 1 stalling on hills? Does anything indicate in the sale
- 2 when people are buying this particular truck, because it
- 3 sounds like there's maybe a defect in the design of the
- 4 way that that fuel line is running, and to address that,
- 5 if there was a warning that if you drive this on hills and
- 6 your fuel is low it may stall would clearly indicate to
- 7 people the problem that they may have if they allow the
- 8 fuel to run down. Were they informed of that?
- 9 MR. COLLINS: I don't have the manual before
- 10 me, but I think that my guess would be that there's in the
- 11 manual operating on low fuel could cause problems.
- 12 MS. JOHNSON: But you're not certain of that,
- 13 sir?
- MR. COLLINS: Well, I would be willing to bet
- on that that there is something in a manual that says low
- 16 fuel would cause problems with power.
- But more importantly, this is a repair case,
- 18 and when it was brought before TxDOT and then sent to
- 19 SOAH, there was nothing to repair because there was
- 20 nothing that was wrong. That's what we're talking. This
- 21 isn't a repurchase case. The warranties for that, the
- time period long since expired.
- MR. VANDERGRIFF: I think we do understand
- 24 that.
- MR. COLLINS: So to answer your question, I

- 1 can't swear on a stack of bibles that's in there but I
- 2 would be willing to guess that there's something that says
- 3 if you have low fuel you're going to have problems.
- 4 MR. VANDERGRIFF: Director Rodriguez.
- 5 MR. RODRIGUEZ: Mr. Chairman, may I ask a
- 6 question or two from staff?
- 7 MR. VANDERGRIFF: Sure, please.
- 8 MR. RODRIGUEZ: We have an ALJ decision before
- 9 us. Right?
- MR. HARBESON: That's correct, sir.
- 11 MR. RODRIGUEZ: And we may vacate or modify
- 12 that ALJ decision on any one of three grounds. Right?
- 13 MR. HARBESON: That's correct.
- MR. RODRIGUEZ: In your view do we have the ALJ
- in this case, has he or she misapplied or misinterpreted
- 16 the applicable law?
- MR. HARBESON: No, sir.
- 18 MR. RODRIGUEZ: Has that ALJ, whether he or
- she, properly relied on a prior agency decision that is
- 20 incorrect -- or improperly relied on an incorrect
- 21 decision?
- 22 MR. HARBESON: I do not think that error was
- 23 made.
- MR. RODRIGUEZ: In your opinion did the ALJ
- 25 make a technical error in this case?

- 1 MR. HARBESON: No, sir.
- 2 MR. RODRIGUEZ: I move we dismiss the
- 3 complaint, Mr. Chairman.
- 4 MR. VANDERGRIFF: We have a motion. Do we have
- 5 a second?
- 6 MR. BUTLER: I second it.
- 7 MR. VANDERGRIFF: We have a motion from
- 8 Director Rodriquez and a second from Director Butler to
- 9 dismiss the complaint. Any discussion?
- 10 MR. WALKER: I'd like to hear Marvin make a
- 11 comment. Marvin, you're the largest truck dealer in the
- 12 country, you deal with these issues on a daily basis.
- MR. RUSH: I'm probably not as directly
- involved as I used to be.
- 15 MR. WALKER: I'd like your comments.
- 16 MR. RUSH: I do know that low fuel will cause
- 17 problems. I don't have the specifics of this, what caused
- 18 the low fuel, if there was low fuel. It's such a
- 19 questionable issue just not having any -- if I had some
- 20 mechanical people to talk to here, people that had done
- 21 the job, I could do a little better talking, but you're
- 22 asking me to make a decision based on the law and not
- 23 particularly on what was going on because I'm not privy to
- 24 that information.
- I can say that I have seen in my 46 years

- 1 experience fuel shortages coming from a fuel tank, but not
- 2 to this extent. I don't know how many times he's had this
- 3 problem, but whatever it is, I hate to sit here and try to
- 4 advise you when I don't know all the facts that were
- 5 written down. But if I'm asked to do what the law says,
- 6 that's one thing -- or what the facts are, I guess I'm
- 7 saying.
- 8 MR. VANDERGRIFF: I appreciate those comments.
- 9 I remind the board again that we're not trying the case
- 10 anew, and Director Rodriguez very correctly pointed out
- 11 the law.
- 12 Any further questions?
- 13 (No response.)
- MR. VANDERGRIFF: All those in support of the
- 15 motion please raise their right hand.
- 16 (A show of hands.)
- MR. VANDERGRIFF: All those opposed.
- 18 (A show of hands.)
- 19 MR. VANDERGRIFF: Director Campbell, I'm sorry,
- 20 I didn't catch your vote.
- MR. WALKER: Walker.
- 22 MR. VANDERGRIFF: Director Walker. Excuse me.
- Director Campbell, I don't know why I'm saying that.
- 24 Director Walker.
- 25 MR. WALKER: I voted for the first.

- 1 MR. VANDERGRIFF: So the motion carried six to
- 2 one. Thank you very much.
- 3 Our next one, also, Mr. Harbeson, if you'd
- 4 introduce the case.
- 5 MR. HARBESON: Yes, sir. That case has been
- 6 resolved in that the vehicle has been sold by the
- 7 Complainant.
- 8 MR. VANDERGRIFF: We no longer have to do
- 9 anything.
- 10 MR. HARBESON: That would be 10-0258CAF.
- 11 MR. VANDERGRIFF: And you're still up with us
- 12 on the consideration of the enforcement motions for
- disposition based on default.
- MR. BRAY: Hold on just a moment. The case may
- have been resolved but there's an open docket, so I would
- 16 request that the board finalize this case, and given
- everything, it seems like the recommended dismissal is the
- 18 right way to go but I don't want to tell you.
- 19 MR. HARBESON: We will be presenting to you at
- 20 the next board meeting an order of dismissal on this case.
- 21 MR. VANDERGRIFF: Okay. An order of dismissal.
- 22 Do we need to take care of this particular item?
- MR. HARBESON: No, sir. I'd recommend that you
- just pass it today because of where we are on it.
- MR. VANDERGRIFF: And I can do that just

- 1 administratively. All right. Then we'll pass the case
- 2 till the next time out in February.
- 3 We have item 3.E which is the consideration of
- 4 enforcement motions for disposition based upon default
- 5 under Chapter 2301. Mr. Harbeson.
- 6 MR. HARBESON: Yes, sir. We have four cases
- 7 before you today were the respondent defaulted on the case
- 8 and you have been presented with the proposed order in
- 9 each of these cases. It's staff's recommendation that the
- orders be approved by the board.
- 11 MR. VANDERGRIFF: I'm pleased to entertain a
- 12 motion.
- MR. RODRIGUEZ: One question.
- MR. VANDERGRIFF: Sure.
- 15 MR. RODRIGUEZ: I notice there's a \$1,000
- 16 assessment in cases number 1 and number 2 and you have
- 17 \$3,000 assessed in number 3 and \$3,500 in cased number 4.
- I was just wondering is there any rhyme or reason for the
- 19 numbers. I was wondering.
- MR. HARBESON: We would look at the facts in
- 21 the individual case, the history of that particular dealer
- 22 with previous violations, and then also consider the way
- 23 we normally treat a particular violation in a case like
- 24 this. So it would be really fact-driven by each of the
- 25 cases. So what we come up with as far as a recommended

- 1 penalty is what we believe to be appropriate based on all
- 2 the given facts of the individual case.
- 3 MR. RODRIGUEZ: So moved, Mr. Chairman.
- 4 MR. VANDERGRIFF: We have a motion. Do we have
- 5 a second?
- 6 MR. CAMPBELL: Second.
- 7 MR. VANDERGRIFF: Second from Director
- 8 Campbell. Any discussion?
- 9 (No response.)
- 10 MR. VANDERGRIFF: Seeing none, please raise
- 11 your right hand in support of the motion.
- 12 (A show of hands.)
- 13 MR. VANDERGRIFF: The motion carries
- 14 unanimously.
- We are actually through the action items of our
- 16 agenda in almost record time. I don't think we've ever
- 17 gone this fast on anything.
- 18 MR. WALKER: So the other people that aren't
- 19 here are the ones that normally slow us down?
- 20 (General talking and laughter.)
- 21 MR. VANDERGRIFF: Director Walker, I consider
- 22 what you said to be almost a softball that I can hit out
- of the park with respect to your very brief comments at
- 24 various meetings.
- 25 Anyway, moving forward we do have, really

obviously through the holiday season not as many updates 1 2 as I expect we will have coming forward in February as the 3 legislature gets in full gear. I did want to note that we 4 held an advisory committee meeting and I'm not sure, Mr. 5 Serna, if you were going to cover that with Ms. Cost here, 6 or since it's listed here, I'd appreciate it if you would 7 say something about that. The Motor Vehicle Division 8 MS. COST: Yes. 9 held its first official advisory committee meeting on 10 January 4 in this very room, and there were 18 11 stakeholders in attendance. The focus of the meeting was 12 on franchise-manufacturer issues so the individuals in attendance were from the Texas Automobile Dealers 13 14 Association, the Alliance of Automobile Manufacturers, 15 there were some manufacturer and distributor representatives present, and then attorneys that represent 16 17 both manufacturers, distributors and franchised dealers. 18 The two topics that were proposed by staff to sort of kick this off were the franchised dealer 19 20 applications themselves and the application process, and that included also the evidence of franchise and the 21 evidence of relocation forms that are submitted with those 22 23 There had been some comments presented by applications. 2.4 the manufacturer alliance with regard to those forms and

some discomfort with some of the language on the forms, so

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1 there was some discussion about that.

2 Staff gave an overview of the agency changes 3 and the division changes and then the application process 4 itself, and then there was a lot of great discussion -- it 5 was an almost three-hour meeting -- with regard to some suggested changes to the forms themselves, some of which 6 7 have already been implemented, others of which are in the 8 process of being implemented. And two advisory committee 9 members basically took the task of looking at the language 10 on the franchise evidence of relocation forms and trying 11 to come up with something that everybody would feel more 12 comfortable with. It was an attorney for the manufacturers and an attorney for the dealers that took 13 14 that on. 15 Future meeting topics were discussed, frequency 16 of meetings, et cetera were discussed, and a couple of 17 items have already been brought up about maybe having some 18 meetings with regard to the SOAH process and how that's 19 going and get some folks from SOAH maybe to attend and 20 discuss their process, and then also maybe something from 21 the Enforcement Division with regard to common things that 22 are seen in complaints, things that the dealers and the 23 manufacturers could do to improve. And so we're still

schedules to have another meeting.

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kind of gathering those comments and looking at our

- 1 MR. VANDERGRIFF: Ms. Cost, I think it would be
- 2 helpful for the board if they received, for lack of a
- 3 better way to describe it, some meeting minutes or notes
- 4 that emphasize what you're talking about.
- 5 MS. COST: You will. I apologize for not
- 6 having them; the meeting was last week.
- 7 MR. VANDERGRIFF: You just had the meeting so I
- 8 don't think that's a big concern today, but that would be
- 9 helpful, particularly since some things of substance are
- 10 discussed and we're going to hear those at some point in
- 11 time.
- 12 MS. COST: That's true. And they're in the
- works. You will be getting those before the next meeting.
- MR. VANDERGRIFF: Does anyone have any
- 15 questions of Ms. Cost?
- 16 (No response.)
- 17 MR. VANDERGRIFF: Okay. Thank you very much.
- 18 Kind of under the media, I believe I saw Kim
- 19 Sue Lia Perkes in the audience here, but we do have,
- 20 unless the executive director is going to cover it, I just
- 21 want to note for everyone that we have the long discussed
- 22 and anticipated My Plates auction tonight up in Dallas
- 23 that's received media attention there, considerable media
- 24 attention, actually, from the newspapers in that market.
- 25 So I don't know if the board would like to have any

- 1 further information on it other than it's taking place, if
- 2 you want any more detail of what's going on. I don't see
- 3 anybody indicating they do.
- 4 MR. WALKER: What are our expectations about
- 5 how many hundreds of millions we're going to bring in
- 6 tonight?
- 7 MR. VANDERGRIFF: We're expecting significant
- 8 Aggie participation.
- 9 MR. WALKER: I've got my Aggie jacket on.
- 10 (General laughter.)
- 11 MR. VANDERGRIFF: Well, I did note the name
- 12 Walker by some of the reserved seats online.
- MR. WALKER: I'm only going to buy one of those
- 14 plates.
- I also want to note that, of course, we're at
- 16 the very beginning of the legislative session so nothing
- 17 has come forward, I'm just noting on our briefing on
- 18 legislative. We do have, as you know, working the two
- 19 bills that this body and the industry spent considerable
- 20 time working on, what we call the Vision 21 bill and the
- 21 DMV Cleanup bill, and those are moving forward through
- 22 legislative counsel and legislative review. Expect those
- 23 to be out and filed in the near future.
- We also do have the concepts of what we've
- 25 called the SDSI, the self-directed, semi-independent, the

- 1 enterprise bill, and the setting fees by rule bill, and
- 2 those are also in the works and discussion. I would
- 3 expect at our February meeting to have a lot more detailed
- 4 discussion on those as to where we're at.
- 5 And then the last item which I'll also defer
- 6 because I have not been participating in that directly,
- 7 that's the organizational assessment that we've discussed
- 8 as a board. I'll defer that to Mr. Serna, but I do want
- 9 to note that two of our board members, Laura Ryan and
- 10 Ramsay Gillman have worked very hard on that, I think so
- 11 hard that neither one could attend today. They are busy
- on other matters but they've spent a lot of time in the
- last month on that and very much appreciate that on behalf
- of the board. Did want to note that.
- 15 With that, I'll pass it to Mr. Serna for
- anything he might have to add.
- 17 MR. SERNA: Yes, sir, just a couple of things,
- 18 trying to keep things brief in the spirit of the rest of
- 19 the board meeting.
- One of the things that I want to point out to
- 21 the Board members, we added an item, contract authorities
- 22 and limits. I want to let the board know that the staff
- is working on material that we will present to the board
- in the February board meeting to outline a recommendation
- 25 to the board concerning clarifying the authority for the

- 1 contracts that the executive director can execute only
- 2 after board approval, contracts that the executive
- 3 director can execute without board approval but reporting
- 4 to the board immediately after execution, and then
- 5 contracts or other agreements that the executive director
- 6 can execute and then simply report to the board on a
- 7 quarterly basis.
- 8 So we will try to put a matrix together. In
- 9 addition, that matrix will include further delegation so
- 10 the board will understand who I would delegate down to
- 11 execute a contract. So for example, it could be that it's
- 12 a \$10,000 maintenance contract and I would delegate that
- down to our COO. So we'll have that outlined in the
- 14 matrix for the board to look at, comment on and sign off
- 15 on.
- MR. WALKER: Can I ask you a question right
- 17 there?
- 18 MR. SERNA: Yes, sir.
- 19 MR. WALKER: There has been some questions
- 20 brought up by Ms. Johnson that I've never heard a
- 21 definitive answer to from anybody that said that in state
- 22 agencies, with the exception of TxDOT, is that no state
- employee has the authority to sign contract without the
- express granting by the board. Am I correct, Ms. Johnson?
- MS. JOHNSON: Yes, sir.

1 MR. VANDERGRIFF: So there was some question, I believe, by you that says well, yes, I do have authority 2 3 as the ED to do that, and have we ever got a formal answer 4 that says you do or you don't, whether you do have that 5 authority? And if you don't have the authority, then it 6 would be the responsibility, I believe, of this board to 7 grant you authority, and when we do that, then you're 8 right now saying these are the parameters for which we're going to grant that, that okay, Ed can make a decision for 9 10 up to \$10 million worth of contracts or \$100 million, 11 whatever it might be, and how we layer that like we do in 12 all of our companies. 13 So my question is do we know the authority is 14 of the director from the state? 15 MR. SERNA: One of the things that's going to 16 be included in that discussion is what authority has already been granted, and we'll clearly point out the 17 18 staff's research on that, what authority has clearly been granted by the board, what authority is granted via 19 20 statute. 21 MR. WALKER: But Ed, you're missing my point. I'm the board, I've been on this board since creation of 22 23 this board, and I know that we have never granted any 24 authority that we have voted on -- I can go back and pull 25 my records here. So the question is have we determined

1 whether or not the executive director needs the authority 2 of the board to sign contracts. Do we know that answer? 3 MR. SERNA: Yes, sir, I think we do. I'll 4 defer to Brett. 5 MR. BRAY: Yes. We have researched it 6 considerably and it is the legal staff's considered 7 opinion that actually you have granted the executive 8 director full authority. You did that on April 8, I believe. It was the April board meeting where you passed 9 10 a resolution authorizing Mr. Serna and Ms. Flores to place 11 signature cards on file with the Comptroller's Office. 12 Because this issue has come up on a number of 13 occasions, we consulted with the experts at the 14 Comptroller's Office and they say that under Chapter 2301 15 which is the state purchasing act -- actually state expenditures act, excuse me -- they say that those 16 signature cards in place, along with the resolution by the 17 18 board that's on file is all that the Comptroller needs or wants, and that they consider Mr. Serna to have full 19 20 authority to execute purchase orders and contracts. 21 They also advised me that periodically, or I 22 quess routinely, they examine Department of Motor Vehicle 23 documents, just like they examine all other state agency 2.4 documents that flow through them, and of course, all

purchasing flows through the Comptroller's Office, and

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- they advised me that had there been any question or
- 2 concern, they would have not hesitated to tell us so and
- 3 they've never done such.
- To date there have been eight or nine or
- 5 possibly now ten documents executed by Mr. Serna, and
- 6 there are approximately 40 or 50 purchase orders that get
- 7 executed every month at his discretion or by his designee.
- 8 As you pointed out, at the birth of the agency,
- 9 and you were here for that, the original signatories were
- 10 the chairman and Ms. Heikkila, and it wasn't until that
- 11 April time frame when the change occurred, and again, that
- 12 was by board resolution.
- We've researched how other agencies work, what
- other agencies do, how they operate under this chapter,
- 15 and of course, it can vary greatly because the organic
- 16 statute can give the executive director or the commission
- or board certain powers and be more specific. Ours is not
- 18 that specific.
- The general way that we see it works under this
- 20 particular chapter of the Government Code is that a board
- or commission that wants to take a more active role, have
- 22 a say or make some sort of limitations, in the way that
- 23 Mr. Serna was discussing, is you do so by rule and you can
- 24 do it pretty much in any way you choose to do it. In the
- 25 sampling that I've seen, agencies can put caps or dollar

- 1 limits on contracts that a staff or an executive director
- 2 can sign. Sometimes there are agencies -- Parks and
- 3 Wildlife comes to mind -- where a specific kind of
- 4 contract or category, something you're interested in, has
- 5 to have commission approval.
- The most frequent thing that I've seen is a
- 7 reporting mechanism whereby an executive director must
- 8 report either before or after, depending on the board or
- 9 commission, must report contracts and purchase orders that
- 10 he signs. And as a matter of fact, that's in your rules
- 11 presently. I think it's 206.2 does require that he report
- regularly on expenditures and on progress of divisions.
- 13 Expenditures gets into purchase orders and those are
- 14 contracts in the state vernacular.
- So presently what you've done by the April
- 16 resolution is authorize him to basically conduct all
- 17 business on your behalf of sign anything on your behalf,
- 18 no limitations. If you elect to place limitations on it,
- 19 the appropriate way to do that would be rulemaking, and if
- you choose to do it by rulemaking, you have great latitude
- in however you want to craft it.
- MR. WALKER: So you're saying that that
- latitude to allow the executive director or whomever to
- 24 make expenditures for the department needs to be done
- 25 through a rulemaking process?

- 1 MR. BRAY: I believe that's the most
- 2 appropriate way. Yes, sir.
- 3 MR. WALKER: So if we were to day that Mr.
- 4 Serna has the ability to sign contracts indenturing the
- 5 department for 10 million bucks, then we'd have to put
- 6 that in a rulemaking process in order to allow him to
- 7 spend \$10 million.
- 8 MR. VANDERGRIFF: He's got full authority now.
- 9 MR. WALKER: He has full authority right now
- 10 but if we want to limit that authority we have to do that
- 11 through rulemaking.
- MR. SERNA: And that's what I'm proposing that
- we put together a rule or a proposed rule in that matrix.
- 14 We come back and say here's how the board, after of a
- 15 year of operation with me as executive director, here's
- 16 how the board wants to handle particular agreements or
- 17 particular levels so that it's not as unclear to the board
- or to anybody else, myself or anybody else what those
- 19 levels are. And it can be very clear, we could say this
- 20 type of contract, this level, you need to bring it to the
- 21 board before you execute it, you can negotiate it but you
- 22 can't execute it, or before you issue a bid.
- So we'd have that level of detail in our matrix
- 24 and then the board can decide here's what we want versus
- 25 what we have now which is just sort of nothing, and I

- 1 think that would kind of help clarify some of the issue or
- 2 confusion on the issue.
- 3 MR. RODRIGUEZ: And that's forthcoming. Right?
- 4 MR. VANDERGRIFF: Well, we haven't had a
- 5 discussion as to what direction.
- 6 MR. RODRIGUEZ: That's the discussion we're
- 7 going to have about it.
- 8 MR. SERNA: Yes, sir.
- 9 MR. VANDERGRIFF: Vice Chair, do you have a
- 10 question?
- 11 MS. JOHNSON: I keep all my agendas so I can
- 12 pull them, but if you would, please, Mr. Serna, could you
- send a copy to all the board members, because I don't want
- to ask for this information alone, a copy of the signed
- 15 resolution as well as a copy of the Comptroller validating
- 16 those statements that Mr. Bray just made, please?
- MR. SERNA: Yes, ma'am.
- MS. JOHNSON: Thank you.
- 19 MR. RODRIGUEZ: I don't need that copy, Mr.
- 20 Serna.
- MR. SERNA: Yes, sir.
- MR. VANDERGRIFF: Any further questions on this
- 23 topic from the board?
- 24 MR. WALKER: I know that we have as a board
- 25 discussed this for probably five or six months, and so

- 1 ultimately I think that this board here, this nine-member
- 2 board is ultimately responsible for whether -- I mean, if
- 3 the legislators or the governor sees that we're spending
- 4 too much money, they're not going to come and grill Mr.
- 5 Serna over here, I think they're going to come to this
- 6 board and say look how you're managing something I gave
- 7 you to manage.
- 8 And most companies, corporations are managed by
- 9 a board but they're not micro-managed. I don't want to
- 10 get involved with the toner packages that you buy or the
- 11 maintenance contract on Xerox or buying the license plates
- from the State of Texas, but I do think that this board
- 13 needs some accountability as to what Mr. Serna's latitudes
- 14 are, and apparently Ms. Flores has that same latitude,
- 15 according to Mr. Bray here, to go out and to indenture
- 16 this agency, unlimited. If she wants to sign a contract,
- according to Mr. Bray, tomorrow to buy widgets for the
- 18 State of Texas, she has the ability to do that,
- 19 apparently.
- We need to limit that authority and we need to
- 21 move forward to make a decision that says these are the
- 22 limitations that the people under us can make. I mean, we
- have it in my company, we have it in Mr. Rush's company,
- 24 and I guarantee we have it over here at the Vandergriff's
- companies where people have limits as to what their

- 1 spending authorities within those companies.
- 2 MR. VANDERGRIFF: I think all of that is
- 3 totally appropriate. My suggestion would be with Mr.
- 4 Campbell -- and I know he's counting the days perhaps till
- 5 February, and Mr. Butler from their committee that perhaps
- 6 you all could spend a little bit of time in the next
- 7 couple of weeks, and talking to some of the other board
- 8 members as well, and direct staff with some language to
- 9 bring to us at the February meeting.
- 10 Is that appropriate to do that?
- MR. WALKER: There's my answer: by February
- we're going to have an answer.
- 13 MR. VANDERGRIFF: That's correct.
- MR. BUTLER: We'll have to have a meeting in
- 15 Hot Springs.
- 16 (General laughter.)
- MR. RODRIGUEZ: Mr. Chairman, I just wanted to
- 18 make one comment on what was said already. Although it
- 19 seems like it's limitless, there are purchasing
- 20 requirements and purchasing laws and other processes that
- 21 kind of are involved. It's not just going out and signing
- 22 something. So it could be that he has the same authority
- 23 he has now provided that the board approves certain
- 24 contracts, is what I'm saying, as opposed to getting into
- you may sign this, you may not sign this kind of stuff.

- 1 So I was just going to say it sounds like he
- 2 can go out and sign anything but he's also governed by
- 3 other laws that deal with requests for proposals, requests
- 4 for qualifications, purchasing limitations, advertising
- 5 and all those kind of things. So I just want to clear it
- 6 up a little bit better.
- 7 MR. WALKER: Those are very good valid points,
- 8 and I agree with you.
- 9 MR. SERNA: And again, my intent was to point
- out to the board that we will be developing a matrix to
- 11 bring back to address some of these issues.
- 12 On monthly financial statements, monthly
- 13 financial statements were included in the board book. I
- don't know if you have any questions about those
- 15 statements or if you want Ms. Flores to provide an
- 16 overview. I'll defer to the board if you have any
- 17 questions or anything.
- 18 MS. JOHNSON: I have one question and it's not
- 19 necessarily in financial statements. I'm not sure, Ms.
- 20 Flores, if you can answer this or not, but when we were
- 21 working out our budget over the summer and into the fall,
- 22 we had about 150 FTEs that we had not filled, and I'm
- wondering, and maybe, Mr. Serna, you need to tell me where
- 24 we are.
- MR. SERNA: Yes, ma'am. I've got that coming

- 1 up.
- MS. JOHNSON: Okay, perfect. Then I'll just
- 3 wait.
- 4 The only other concern that I had is in this
- 5 budget time, the \$358,000 we're spending on the stickers,
- 6 the VTR, in this budget cycle that's probably something if
- 7 we have to cut that makes sense to put that program on
- 8 hold temporarily. It's not an option for people to have
- 9 stickers and \$358,000 would keep a lot of jobs in the
- 10 State of Texas.
- 11 MR. SERNA: Right. We understand that and I
- 12 agree. One of the things on the financials that I wanted
- 13 to make -- two things I wanted to make the board aware of.
- One, like all state agencies we were asked to look at our
- 15 current budget and find ways to reduce general revenue.
- 16 Just to remind the board that we really only have two
- areas that have got general revenue: Automobile Burglary
- 18 and Theft Prevention Program, and a small amount of
- 19 general revenue in our Motor Carrier Division.
- 20 I've also asked Ms. Flores and the directors to
- look at their budgets in general, including those budgets
- 22 that are funded from the Highway Fund, and look for ways
- 23 to reduce expenditures. So even though we haven't been
- 24 asked by the leadership or anybody, since those are non-GR
- funds, we're still going to look for ways to reduce our

- 1 expenditures and to reduce our current budget in the
- 2 divisions and in those areas as well.
- 3 So Ms. Johnson, it's right along the same line.
- 4 We're taking it a little bit further to participate in
- 5 that.
- 6 Under agency operations, two things. One, I
- 7 did want to give you a very high level overview of where
- 8 we're at with the organizational assessment. Staff,
- 9 working with Ms. Ryan and Mr. Gillman, have been
- developing the request for proposal that we'll be posting.
- 11 We'll be sending a notice to the Governor's Office
- requesting approval to proceed, as well as notification to
- the LBB and the State Auditor's Office per statutory
- 14 requirement. We don't have to get approval from the LBB
- 15 and State Auditor's Office but we do need approval from
- 16 the Governor's Office before we can post.
- 17 In addition, we'll be posting in the Texas
- 18 Register the agency's intent to issue the RFP contingent
- on Governor's Office approval. If we get approval from
- 20 the Governor's Office, then our plan is to post the RFP as
- 21 soon as we get approval from the Governor's Office.
- 22 Hopefully that won't be any later than the end of this
- 23 month. If we follow that schedule, we should have a
- 24 contract executed in early March. And then the
- 25 instruction that staff has from the board members that

- 1 we're working with is that we should have a final report
- 2 before or on the end of June on the organizational
- 3 assessment.
- 4 There's one thing that I do want to stress that
- 5 staff understands very clearly that the board members have
- 6 stressed to us and we understand very clearly and we will
- 7 make clear to the vendor community and the potential
- 8 vendors, and that is that this department does not intend
- 9 to expend any more than \$500,000 to accomplish this
- 10 review. Our preference is that we come in at a whole lot
- lower of a number but we are absolutely not going to even
- 12 consider responses that come in higher than that. We
- heard that very clearly from the board members that we've
- 14 been working with.
- MR. RODRIGUEZ: Mr. Chairman, may I ask a
- 16 question?
- 17 MR. VANDERGRIFF: Please.
- 18 MR. RODRIGUEZ: First of all, I have a
- 19 reservation about spending that much money on a study at
- 20 this point and at this time, but my question is would it
- 21 be better if we waited until after the legislative session
- is done to see what other changes may come our way.
- MR. VANDERGRIFF: Well, I'll let you answer
- 24 that question.
- 25 MR. SERNA: We'll have a provision in the bid

- document that requires the vendor to consider any changes.
- 2 MR. RODRIGUEZ: I understand that, but this is
- 3 an organizational efficiency study, for lack of other
- 4 verbiage here. How are they going to assess that
- 5 prospectively? You're saying we're carving out for them
- 6 to possibly incorporate what other things may be coming
- 7 our way. You're asking them to assess something that
- 8 hasn't happened is basically what I'm asking you. That's
- 9 an observation. My foremost reservation right now would
- 10 be to spend \$500,000 on this.
- 11 MR. WALKER: Certainly the two members that are
- on this, I'm speaking for them, they're not here, but they
- have been adamant that that's a ceiling. The staff has
- presented much higher numbers for ceilings and they've
- 15 been very adamant that we wouldn't do that. I think if
- 16 this thing gets anywhere close to that kind of number it
- would come back to this board for discussion.
- 18 MR. SERNA: It is going to come back to the
- 19 board.
- MR. VANDERGRIFF: So therefore, I think that
- 21 that's just out there for a ceiling at the moment, number
- one. Number two, given the way things work in state
- 23 government -- and I know you understand that better than
- 24 any of the rest of us -- it takes a while to even get to
- 25 the process of selecting somebody, and by the time you do

- 1 that we'll be halfway through the session, and by the time
- 2 they get really geared up, I think we will have a pretty
- 3 good understanding. If we waited until after the session
- 4 to start this process, then we could be way behind the
- 5 eight ball. But this will come back to this board.
- 6 MR. RODRIGUEZ: I'm not saying we wait. I'm
- 7 just saying you're asking them to assess something that's
- 8 not going to be working for a while, and let's suppose
- 9 that some changes happen, it will be September 1 or so
- 10 before they become effective. It will be delayed another
- 11 quarter of a year, just like we got delayed a quarter
- 12 getting started. So we're going to be well into next year
- before we even realize the impact of whatever that change
- 14 is.
- 15 MR. VANDERGRIFF: I think the assessment would
- 16 be geared along the lines to also assess what we need to
- do to be able to accept additional responsibilities as
- 18 well.
- MR. RODRIGUEZ: The only other thing I'll ask,
- 20 Mr. Chairman, is that we evaluate resources in state that
- 21 would cost us nothing to do the same before we go, as
- 22 well, as part of the recommendation.
- MS. JOHNSON: If we're going out for bids,
- 24 would it be advertised in the bids that there would be a
- 25 ceiling on this?

- 1 MR. SERNA: We would probably either put that
- 2 in the bid or we would put it in the Texas Register
- 3 notice.
- 4 MS. JOHNSON: So it would be published so
- 5 people would be aware of that.
- 6 MR. SERNA: Yes, ma'am.
- 7 MR. BRAY: It's not in the Texas Register
- 8 notice, but I insisted and it will be in the bid.
- 9 MS. JOHNSON: Excellent. Okay.
- 10 MR. SERNA: And part of the reason that we
- 11 wanted to have something there is we didn't want the
- vendors to spend time putting a proposal together that was
- much higher than the board would ever want to consider
- doing. But I want to stress the \$500,000 is, as the
- 15 Chairman has indicated, a ceiling, not a target. So I
- 16 guess I'm stressing that to the vendor community as much
- 17 as anything else.
- 18 Also under agency operations I want to pass
- 19 these out very quickly.
- MR. WALKER: Are we moving past the financials.
- MR. SERNA: Yes, sir. I'm sorry, unless
- there's still some questions.
- MR. CAMPBELL: Can I ask you a question on the
- 24 financials before you move, Mr. Serna?
- MR. SERNA: Yes, sir.

1	MR. CAMPBELL: And I know you're going to cover		
2	some of this in the Vision 21 category that you've got		
3	written down. But knowing that we don't have much		
4	latitude in the general revenue side and we have a		
5	surplus in that category, is that going to be a target		
6	from the state, the extra funds?		
7	MR. SERNA: Yes, sir. Let me talk a little bit		
8	about that here versus in the Vision 21 area. Any excess		
9	funds that the department has that are not general revenue		
10	may still be a target. They would all lapse anyway, but		
11	may still be a target just because of the issue concerning		
12	transportation funding in the state, and 86-87 percent of		
13	our budget comes out of the Highway Fund, Fund 6, and		
14	that's where those funds are at.		
15	So while they wouldn't necessarily be a target		
16	from the perspective of assisting in reducing the \$27		
17	billion shortfall because that's on the general revenue		
18	side, I'm confident that our budget will be discussed in		
19	light of its impact on transportation funding, or our		
20	budget total will be discussed in light of its impact on		
21	transportation funding and those funds in particular.		
22	MR. CAMPBELL: Well, specifically, if we don't		
23	have that money identified and what you're going to do		
24	with it, I feel like it is an extreme target. Would you		
25	agree?		

- 1 MR. SERNA: Yes, sir, I do.
- 2 MR. CAMPBELL: And have we identified or have
- 3 you been able to identify how we're going to utilize that
- 4 money?
- 5 MR. SERNA: We have identified the use for the
- funds in this fiscal year but it's not all those funds.
- 7 Them majority of those funds will be targeted for use in
- 8 the next biennium and that's included in our legislative
- 9 appropriations request.
- 10 MR. WALKER: Next question.
- 11 MR. SERNA: Yes, sir.
- MR. WALKER: Ms. Flores, when I reviewed the
- 13 financial statements, every time I had a question you had
- the answer in the footnotes, and I appreciate that, so I
- don't have very many questions to ask. But I do have a
- 16 question or two questions here. Our travel expenses have
- 17 kind of doubled every month for some reason in-state.
- 18 What's the reason that we go from \$8- to \$14- to \$32-?
- 19 MR. SERNA: You will probably see that coming
- 20 back down. We had higher expenses because we had Vision
- 21 21 staff visiting with tax assessor-collectors, gathering
- 22 information. We also attended a couple of stakeholder
- 23 conferences or sessions that were out of town. And that's
- 24 the only thing, and now that information has been gathered
- and we'll see that starting to taper back down.

- 1 MR. BRAY: I can add to that one more item, and
- 2 that is what was kind of ramped up is investigations.
- 3 Travel by investigators has, I think, increased just
- 4 because work activity has increased, partly due to the
- 5 reorganization to one enforcement division.
- 6 MR. WALKER: And the other thing is on the
- 7 revenue report that we get, the pie chart or the column
- 8 chart shows revenue streams pretty consistent there. One
- 9 of the revenue streams that I'd like to look at as a board
- 10 member here is the specialty plate sales, if you don't
- 11 mind. I'd like to know that that program is growing with
- 12 the anticipations that we have, that it's going to be a
- 13 success.
- MR. SERNA: One of the things that I've already
- 15 asked staff to begin looking at is the specialty plates
- 16 program with regard to the vendor's portion of the
- program, because remember we've got the agency-sponsored
- 18 specialty plates program which is minor. It's been about
- 19 a year since that contract has been in place so it's time
- for renewals now, so not only do we want to report to you
- 21 the growth in the number of specialty plates being bought
- from My Plates but also renewals, the number of people who
- bought a plate a year ago that are renewing that plate.
- 24 So are they keeping the plate so it's actually a true
- growth, or are some of those people after a year saying

- 1 I'm not going to renew that plate, so we're seeing the
- 2 renewals drop but the new plates going up so it's a
- 3 consistent revenue stream. So we'll have that analysis
- 4 included in the future now that we've got about a year
- 5 under our belt and data to report that.
- MR. WALKER: We just need to see how successful
- 7 or unsuccessful we're being in those particular areas.
- 8 MR. SERNA: Yes, sir.
- 9 MR. CAMPBELL: I think also we want to make
- sure that we've got a \$25 million commitment there that we
- 11 want to make sure we're getting it collected and on target
- 12 to do that.
- 13 MR. SERNA: Yes, sir.
- On the agency operations, I already talked a
- 15 little bit about the organizational assessment. The other
- thing that I handed out, I just handed out a memo that
- 17 outlines an organizational change in VTR. This is an
- 18 informational item. Mr. Elliston proposed changes to the
- 19 organizational structure in VTR to streamline the
- 20 operations and to make it more responsive to its customer
- 21 base and its partners or stakeholders.
- In the past we had one big division called
- 23 Production and then there was Regional Operations and then
- 24 an analysis and planning group. We now have Regional
- Operations which is important to us and our stakeholders,

- 1 but we also have a section dedicated to registration
- 2 issues, a section dedicated to title issues, and then a
- 3 section dedicated to policy issues. So we didn't increase
- 4 the number of FTEs in the division nor the number of
- 5 managers, but we did improve the efficiency of the
- 6 operations, I believe. So this is for informational
- 7 purposes.
- 8 Concerning facilities, we've completed all of
- 9 our internal staff moves. Now we're just doing some minor
- 10 tweaking of the space. I wanted to compliment both the
- 11 staff that worked on making the move as well as the staff
- 12 that endured packing and moving and unpacking so that the
- boxes could be freed up so that somebody else could pack.
- Everybody did really well and we didn't really see an
- impact to our production coming out of any of that.
- 16 I also wanted to compliment TxDOT's facilities
- people and shop people for accommodating us as a priority,
- 18 so when we needed stuff done, when we needed things
- 19 changed, they were Johnny-on-the-spot and got stuff done
- 20 for us very quickly.
- There's really nothing on equipment to report.
- 22 On personnel which is the question that Ms.
- 23 Johnson had earlier and this is where I intended to cover
- it, we have our Human Resources area is fully staffed now
- and we believe that by mid February we will completely

- 1 assume responsibility for our human resources function and
- 2 relieve TxDOT of their support, providing us support.
- 3 Sharon Brewer, our HR manager, is fully staffed now and
- 4 now we're going through the exercise of simply
- 5 transitioning over, not only the files but also some of
- 6 the operations that were handled by TxDOT. So by mid
- 7 February we'll be fully self-sufficient from an HR
- 8 perspective.
- 9 Also, we posted the internal auditor position.
- 10 The posting will close on January 31. We'll be working
- 11 with Mr. Campbell and anybody else that he designates,
- 12 probably Mr. Butler, on getting an internal auditor
- 13 secured. And once the internal auditor is secured, then
- that individual will move to hire the additional auditors
- 15 that we've allocated to that area so we can begin to audit
- our own operations as opposed to relying on TxDOT for
- 17 that.
- 18 Also, the posting for the chief information
- officer, we'll be interviewing for that. We got 48
- applications, only 16 of them met minimum qualifications.
- 21 We hope to have that done and complete and have a chief
- 22 information officer, someone over our technology area
- onboard by probably the middle of February, if not sooner,
- but no later than the middle of February. Then that
- 25 individual will hire. We have a few remaining IT

- 1 positions that are still vacant in that area that we
- 2 didn't want to hire until we brought that individual
- 3 onboard.
- 4 And then Ms. Flores is going through the
- 5 exercise of hiring several accountants, our budget
- 6 analysts, and that's the other lion's share of some of the
- 7 vacancies that we have that we've gotten over from TxDOT.
- 8 She's in the middle of conducting interviews while trying
- 9 to get everything else done that needs to get done in
- 10 preparation of the legislative session, fiscal notes, et
- 11 cetera. So we should have those positions filled here
- 12 probably within the next couple of weeks to a month, and
- we'll be fully staffed from an accounting perspective and
- we'll cut the ties off from TxDOT there.
- 15 We should cut the ties off from TxDOT on the IT
- side probably by the spring, with the exception of
- 17 network. As long as we're in these facilities, we'll be
- 18 using TxDOT's data network and telephone network and
- 19 they'll be providing us support there because it's
- inefficient to try to duplicate that as long as we're
- 21 still residing on that backbone.
- 22 That's kind of it for personnel. I'll answer
- any questions that anybody has on any of the issues so
- 24 far.
- MS. JOHNSON: So what were the total unfilled

- 1 FTEs as of today or effective as most recently as somebody
- 2 can tell me, even if it was a month old figure. I'm still
- 3 waiting for an answer to that question.
- 4 MR. SERNA: I think right now we've got
- 5 approximately 112 positions that are vacant. Naturally,
- 6 and all of you know this, that number varies a small
- 7 amount because of people leaving, people coming onboard,
- 8 but approximately 112. Of the positions that we're trying
- 9 to fill that I just described, probably 30-plus are in the
- 10 financial area, IT is holding approximately -- about how
- 11 many, Linda? -- vacancy-wise we probably have about a
- dozen on the IT side. Human Resources is fully staffed,
- 13 Legal is fully staffed -- that's the other thing I need to
- 14 report, Legal is fully staffed. Internal auditor, I think
- 15 we had allocated three additional to internal auditor from
- 16 our original allocation.
- And then we also have some positions that we
- 18 are holding vacant to reallocate to the divisions for
- 19 Enforcement or Licensing or Motor Carrier operations, and
- 20 the reason we're holding them vacant is I want to get back
- 21 from the divisions -- and I have gotten some information
- 22 from some of the directors -- how they would utilize those
- 23 positions to sort of enhance our services or enhance the
- 24 service that we're providing to either the citizens and/or
- our stakeholders. And that number is approximately, I

- 1 think it's a little bit higher than that. You think it's
- 2 only six? I'm looking at Linda. So we've got about six
- 3 in the contingency.
- 4 The other positions that we've got, and we'll
- 5 provide a detailed analysis and a breakdown because the
- 6 other positions that we've got were designated during the
- 7 transition as being needed in a particular area and we've
- 8 actually found that we didn't need them, so we may have
- 9 positions that we'll hold vacant and that's some of the
- 10 money that will be released back to the State.
- 11 MR. WALKER: Good. I like that.
- MS. JOHNSON: Yes. But it does beg the
- 13 question for over a year and a half we've lived without
- some of these folks and I do know that we've been relying
- 15 heavily on TxDOT to provide services such as HR and
- 16 accounting, but I wasn't certain. I mean, it begs the
- 17 question of what work have we not gotten done without
- 18 these positions and do we really need all of the
- 19 positions. So I think that you're probably going to hear
- 20 that. This is a pretty conservative board and that
- 21 challenge is going to be asked, I'm certain.
- MR. SERNA: And I'll give you an example of
- 23 positions that we received that were allocated in the
- 24 TxDOT transition but that we don't believe we'll need
- 25 because we've reassigned existing staff, and that's in our

- 1 Purchasing Department where we took existing staff,
- 2 reassigned them, we'll continue to retrain them to do
- 3 that. That's going to be about four or five positions,
- 4 and those are positions that we would probably come to the
- 5 board and say we don't think we need these, or come to the
- 6 board and say we'd like to reallocate these to Enforcement
- 7 investigators or Licensing, people in Molly's area, or
- 8 something like that.
- 9 MR. VANDERGRIFF: I do want to note that last
- one you mentioned, from my perspective anyway, I've had an
- 11 unusual amount in the last 60 days of people concerned
- about getting licenses out, and I know that's somewhat due
- to staffing as we had kind of a sudden shortfall come up
- there. So I would encourage us, if we're going to be
- reallocating, to be looking there for support.
- 16 MR. SERNA: It's my intent that we come back to
- 17 the board with first here's how we could reallocate these
- 18 resources and fund them, but then also, like the rest of
- 19 the board, we are a relatively conservative management
- team and we'd want to be able to demonstrate both to you
- 21 as our leadership but also the legislative leadership that
- through our efficiency we can maybe not use all the FTEs
- that we were allocated.
- MR. RODRIGUEZ: That's good. There was no
- 25 change in the FTE number in the submittal to the LAR.

- 1 MR. SERNA: No, sir. It's 647, so the LAR has
- 2 got 647 as well.
- 3 MR. RODRIGUEZ: So I quess what I'm saying is
- 4 if we're going to need less then we need to so
- 5 communicate. We may not have a choice, maybe they'll cut
- 6 them regardless, but I'm just saying if it passes the way
- 7 it is, then that's what it is, and then it's not a matter
- 8 of not needing them, rather realigning them or
- 9 reclassifying.
- 10 MR. SERNA: Yes, sir. It's actually both those
- 11 options. If it's a matter of reducing the total number,
- we would want to do it before the appropriations process
- is up, but if it's a matter of realigning.
- MR. RODRIGUEZ: That's my point. We didn't
- 15 make any changes in that regard.
- 16 MR. SERNA: In the LAR, no, sir, not initially
- 17 because we haven't had time to really evaluate the
- 18 situation by the time we had to do that.
- The only thing on intergovernmental relations
- 20 that I want to make sure the board is aware of, two
- 21 things: one, approximately a thousand bills have been
- filed to date and the department is tracking about 100
- 23 bills of interest. For us a bill of interest is any piece
- of legislation that could affect the agency's operation or
- 25 place additional responsibilities on the agency. We have

- 1 not been asked for any formal fiscal notes or anything on
- 2 any of these bills yet, but we anticipate that that will
- 3 start happening pretty quickly.
- 4 And I think Denise is probably going to share
- 5 this list, if she hasn't already, share the list with the
- 6 board. We're just trying to finalize our list before we
- 7 send anything out of what we're tracking so you will know
- 8 those bills, both on the Senate and the House side.
- 9 Another thing that I believe was included in
- 10 your book, and it's for informational purposes, staff
- 11 submitted the annual report of non-financial data as
- 12 required in statute. This goes to the Governor's Office,
- 13 the Auditor's Office and the Legislative Budget Board. We
- just want to make you aware that we had completed that.
- 15 Vision 21, I already talked about the portion
- of the project that I had intended to brief the board on.
- 17 I do have a handout that I wanted to have each of the
- 18 board members get. We're going to start producing this
- sooner and probably send out updates on Vision 21 at least
- 20 every two weeks to kind of give everybody an update on
- 21 where we're at.
- 22 This particular update is broken into several
- 23 areas. The first, the known enhancements or the
- improvements that we're making to the current system, it's
- 25 sort of the short-term improvements. We're getting a lot

- of positive feedback from the county tax assessor-
- 2 collectors concerning these new enhancements.
- 3 The second phase is, of course, our business
- 4 process analysis. This is key to us. This is one of
- 5 those things that I will be coming back to the board for
- 6 approval to proceed on, regardless of the dollar amount,
- 7 because of its significance.
- 8 The third item, Mr. Campbell, this is on page
- 9 2, the future support technologies. This will come out of
- 10 part 2, the business process analysis, and we will put a
- 11 bid on the street that says: Okay, now vendors, we want
- some technology solutions to support what it is that we've
- said we wanted to do in the business process analysis.
- 14 This will spend the lion's share of the money, but since
- 15 nothing is identified yet there's no tag for that.
- 16 Item four in this report is kind of an update
- on what's been going on in our changed management area
- 18 with regard to communicating with our stakeholders and
- 19 internally as well.
- So we'll start producing this report on a
- 21 regular basis, and by regular I mean if there are changes
- 22 biweekly but at the very least monthly. We'll also get
- 23 this to the board before the board meeting beginning with
- 24 the next board meeting.
- Let me get back to my agenda. I think the last

- 1 thing I had are the results of the survey of employee
- 2 engagement. That was included in the board book. I'm not
- 3 going to go over those survey results. I would like to
- 4 point out, and I mentioned this before, we got very good
- 5 staff response from the staff on the survey of
- 6 organizational excellence.
- Our next steps, we will be creating an internal
- 8 website where our employees who are interested in working
- 9 on a work group to improve those areas where we had a
- 10 lower score can volunteer, and of course, we'll work with
- 11 their managers to make sure that they have work time to do
- 12 that, but can volunteer to participate. We will put
- specific plans together and work teams together that have
- 14 timelines to address how we're going to improve any of
- 15 those areas, and we'll keep the board briefed on how we're
- 16 moving forward. We intend to post, unedited, all of this
- 17 report for all of our staff to be aware of so that
- 18 everybody can see exactly what we're all seeing with
- 19 regard to the results.
- That's all I have to report, and I'll answer
- 21 any questions that anybody has. Yes, ma'am.
- MS. JOHNSON: I received the shorter version,
- 23 not the pretty version, and so I'm working off the shorter
- 24 version. One of the things that I noticed in here -- and
- 25 it is in our book too -- is there's a comment in here that

- 1 the regional employees seem more satisfied with work
- 2 performance and with communication and training and maybe
- 3 act more together as a team. Looking at that statement,
- 4 will that lead your team very likely to say: Well, let's
- 5 go out and find out what the regions meant. It might be
- just because they're a smaller group and they're together,
- 7 but to analyze how is that happening.
- I know I got a really cute Christmas card from
- 9 the Houston regional office and it was just nice to pull
- 10 the whole team together and reach out to us.
- MR. SERNA: Yes, ma'am.
- 12 MS. JOHNSON: Then the only other thing that
- was of concern to me, especially since you're trying to --
- there's a cultural change going on, is only two of the
- 15 seven departments did not have an issue with fairness and
- internal communications. So I'm sure that you're going to
- 17 focus on those as issues.
- 18 MR. SERNA: Yes, ma'am. The areas that we want
- 19 to focus on are internal communications where employees
- 20 feel that they're engaged and they have an opportunity to
- 21 get involved. We do want to look at those areas where
- there are strengths and find out why things are working
- 23 well there and see if that's a model that we can
- 24 replicate. In addition, however, we want to look at areas
- where we have a weakness and just see what we can improve

- 1 in our practices.
- I want to engage our employees in doing that
- 3 and not just have sort of a group of managers say well,
- 4 here's how we're going to make things better for
- 5 everybody, versus have the employees say, working with
- 6 managers, here's what would make things better, here's
- 7 what would improve that score next time.
- 8 And the reason I want to publish this for all
- 9 of our employees, both the summary and the more detailed
- 10 report, is so that all of our employees can see where
- 11 we're at so when they do agree to participate they'll have
- 12 all the same information. We are also going to solicit on
- 13 that internal website -- and we'll probably call it
- 14 Challenge TxDMV, or something like that -- but on that
- 15 internal website we are also going to solicit just sort of
- 16 independent suggestions or white papers from staff. It
- 17 could be that staff don't want to work on a work group but
- 18 they have an idea to make things better, so we're going to
- 19 ask them to submit that there as well.
- MR. CAMPBELL: Just a question, and I'm not
- 21 sure what the answer is for this, but I know in your
- 22 benchmarking and comparison and that kind of stuff you
- 23 normally do it with other agencies of similar size-type
- 24 stuff. Is there a way to include the non-governmental
- agencies, similar size? And the reason I say that is

- because I think people see a government agency -- and I'm
- 2 not saying our agency, for sure -- but other agencies, the
- 3 federal government is a good example, as not very
- 4 efficient. And so if you're sitting there measuring
- 5 against inefficiencies and you say okay, we're right there
- 6 with them, that doesn't mean we're doing a good job.
- 7 MR. SERNA: Yes, sir, I understand.
- 8 MR. CAMPBELL: So is there a way to implement
- 9 both and kind of measure against both? Because at some
- 10 point in time I think the direction we're trying to go is
- 11 to become more like a business where we're responsible for
- what we're doing, what we generate and what we spend. And
- so I'm just asking you is there a way to measure that.
- 14 MR. SERNA: The University of Texas didn't
- 15 consider -- I'm sorry -- first let me answer your
- 16 question. We will find a way to do that because I think
- that's a very valid observation and suggestion to the
- 18 staff because the department does want to act unlike other
- 19 state agencies.
- The University of Texas, their organizational
- 21 excellence group that conducted the survey for us, didn't
- 22 provide that information. I don't know if they conduct a
- 23 similar survey for private companies or not. We'll
- 24 certainly go back and ask them if they did. If not, I
- 25 think one of the things that we wanted to have the vendor

- 1 look at when they look at that organizational review is
- 2 this material relative to some of these other sort of
- 3 benchmarks, outside of government benchmarks.
- 4 I know the information that we got that you've
- 5 got a copy of, UT normally focuses just on government, but
- 6 we'll ask them if they do this for the private sector as
- 7 well and simply just don't share that with us. If not,
- 8 we'll find other ways to do that, because it's a good
- 9 observation that if you benchmark yourself against a
- 10 particular group, you're still within the particular
- 11 group.
- 12 Any other questions? Yes, ma'am.
- MS. JOHNSON: Not on that topic, but before you
- 14 close would you address the 20th anniversary?
- 15 MR. SERNA: Oh, yes, ma'am. I'm sorry. Thank
- 16 you for reminding me of that. I didn't have it on my
- 17 notes.
- On January 20 the Automobile Burglary and Theft
- 19 Prevention Authority Board will be celebrating their 20th
- 20 anniversary. Why don't you come up and you can explain it
- 21 because you support that board.
- 22 MR. RODRIGUEZ: I think that's been put off,
- 23 Mr. Serna.
- MR. CALDWELL: Thank you. For the record, my
- 25 name is Charles Caldwell and I'm the director of the

- 1 Automobile Burglary and Theft Prevention Authority.
- I think he was getting ready to tell you guys
- 3 about our press conference that we had scheduled for the
- 4 20th, inviting Senator Lucio, who was the author of the
- 5 bill, and several of the board members here and other
- 6 legislators to be a part of kicking off our 20th year of
- 7 existence. Unfortunately, we found out that those
- 8 legislators had other prior engagements and were not going
- 9 to be able to make it. So we're in the process now of
- 10 canceling that press conference -- not canceling but
- 11 postponing that press event until a later date when we can
- get on their schedules and at least get 20 or 30 minutes
- of their time so we can have a successful press event.
- But I think the information that we sent out is
- 15 just announcing pretty much that we've been in existence
- 16 for 20 years and what we've been able to do in those 20
- years in reducing auto theft, and hopefully now burglary
- 18 as well. So if there's any questions.
- MS. JOHNSON: If you would just please notify
- 20 us. If you could get that information to Mr. Serna and
- 21 get that out to us because I'd like to participate in that
- 22 with you.
- MR. CALDWELL: Okay. Yes, we will.
- MR. SERNA: That's all I have, Mr. Chairman.
- MR. VANDERGRIFF: Okay. Do any of the other

- board members have any matter they'd like to discuss or 1 2 bring up with Mr. Serna, or me or with each other? 3 (No response.) 4 MR. VANDERGRIFF: Seeing none. Is there 5 anybody in the public? We asked that at the beginning and 6 I'll ask it at the end of the meeting? 7 (No response.) 8 MR. VANDERGRIFF: Seeing none of that, I would 9 be pleased to entertain a motion to adjourn. 10 MR. RODRIGUEZ: I move, Mr. Chairman. 11 MR. VANDERGRIFF: We do not need one today. Do 12 we have a request that we do have some time in executive session? Do we need that? 13 14 (No response.) 15 MR. RODRIGUEZ: Move we adjourn, Mr. Chairman. MR. VANDERGRIFF: All right. We have a motion 16
- MR. BUTLER: Second.

to adjourn. Do we have a second?

- 19 MR. VANDERGRIFF: All those in favor, please
- 20 raise your right hand.
- 21 (A show of hands.)
- MR. VANDERGRIFF: We're adjourned.
- 23 (Whereupon, at 11:48 a.m., the meeting was
- 24 concluded.)

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1		<u>CERTIFICATE</u>	
2			
3	MEETING OF:	TxDMV Board of Trustees	
4	LOCATION:	Austin, Texas	
5	DATE:	January 13, 2011	
6	I do hereby certify that the foregoing pages,		
7	numbers 1 through 80, inclusive, are the true, accurate,		
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